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PHILIP M. KLUTZNICK

RECIPIENT OF THE DECALOGUE AWARD, 1959

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RESERVATIONS AVAILABLE FOR DECALOGUE ANNUAL AFFAIR

The selection of Philip M. Klutznick, lawyer, noted leader in Jewry, and past international president of B'nai B'rith for the Decalogue Annual Award of Merit for 1959 has been enthusiastically received by the legal profession and the entire community. The event is scheduled to be held on Saturday evening, February 20, 1960 in the Grand Ballroom at the Palmer House. Already on hand are many reservations for the occasion and an overflow house is expected. The price of admission is $10.00 per person. First vice-president, L. Louis Karton, is chairman of the arrangements committee.

Orders for tickets should be sent to the Decalogue Society headquarters, 180 W. Washington Street, Chicago 2, Illinois. Marvin Victor is chairman of the Ticket Sales committee.

BOUQUETS FOR FAVIL D. BERNS

The 1960 Decalogue Appointment Book and Diary is already in the hands of the entire membership of our Society and the chairman of the project, Favil D. Berns, is the happy recipient of praise from many members for the completion of a job well done. The format, contents, and the general appearance of the new volume are as attractive as ever and the annual membership roster indicates the addition of over one hundred names.

Blackstone Printing Co., 117 W. Harrison Street, Joseph Victor, manager, were the printers of the 1960 Appointment Book and Diary.

ALLEN PRESIDENT RAMAH LODGE

Impressive ceremonies marked the installation into office of past president Samuel Allen as the new head of Ramah Lodge, the oldest B'nai B'rith lodge in the Chicago area. Attorney William D. Saltiel was the principal speaker of the occcasion which was held the evening of September 23rd, in the Sovereign Hotel.

Allen is a former president of the Humboldt Boulevard Temple, and former head of the Torts Division, Chicago Corporation Counsel's office.

ISRAELI JUDICIAL SYSTEM SUBJECT OF TALK

Dean Avigdor Levontin of the Hebrew University Law School was the guest of our Society at a Board of Managers luncheon, at the Covenant Club, on October 30th.

The dean who is on a lecture tour in the United States discussed at length the Israeli judicial system.

PHILIP M. KLUTZNICK, Lawyer, Builder, and Leader

By BENJAMIN WEINTROUB, Editor

. . . To achieve its finest hour, American Jewry must hear and see—its deeds must arise out of rich and abundant knowledge better to serve mankind. . . .
—*Philip M. Klutznick*

Among American Jews honored by our Society in the past decade with its much coveted annual Award of Merit were an internationally known scientist, a universally loved rabbi and Zionist, a Federal judge, a United States senator, and a political leader. None of these, however, was so demonstrably unique as a professing, practicing exponent of dynamic Jewish social service as is member Philip M. Klutznick, choice of our Society for its 1959 Award. No pen picture may be attempted unless the writer accepts as his basic delineating premise two distinct characteristics of this man: one, his articulateness and, two, his broad humanitarianism.

The personality and achievements of Klutznick cannot be measured in terms of the familiar saga of the Jewish boy-immigrant who has made good. He is of the second generation of American settlers. He was born in Kansas City, Missouri, in 1907, and his early years were spent in the American Middle West wherefrom stems his professional and liberal college education. At the age of twenty-five, barely two years after his admission to the Nebraska Bar, he was already a deputy corporation counsel of the city of Omaha. Subsequently, he was special attorney for the United States Department of Justice. This was but the beginning of a professional and business career the continuity and the progress of which were perennially dwarfed by his passionate concern with the problems of the Jews here and abroad. It is generally conceded that today no voice in America is more explicit, in its message and more vigorous in the character of its eloquence than that of our guest of honor.

He was a member of the United States delegation to the Twelfth United Nations General Assembly. He has traveled extensively in Europe, North Africa, the Middle East, and South America. His experiences and observations proved a tremendous boon for the dissemination of his utmost convictions—the precepts that we are our brothers' keepers in our quest for global unity and peace. In a speech in Milwaukee, in 1958, in emphasizing this theme, he quoted the late Wendell Wilkie, posthumous recipient of the Decalogue Award of Merit for 1944:

. . . We are members of a world team. We are partners in a grand adventure. We are offered the most challenging opportunity in all history—the chance to help create a new society in which men and women the world around can live and grow invigorated by independence and freedom. . . . Our thinking must be world-wide. There can be no peace for any part of the world unless the foundations of peace are made secure throughout all parts of the world. . . .

Klutznick's strongest link with American Jewry was forged during his association with the fraternal order of B'nai B'rith. Founded more than a century ago, this organization is one of the most representative bodies of Jewry not only in the United States but in many countries on several continents. Its intrinsic purpose is service to the Jew. It seeks to foster several aspects of Jewish culture, and through an agency of its own, the Hillel Foundation, to be of spiritual help to thousands of Jewish students on many campuses in the United States. It is on guard against encroachments on the good name of the Jew through the Anti-Defamation League. Under Klutznick's administration as international president of the Order (1953-1959), B'nai B'rith grew in membership to more than 400,000 men, women, and youth, and has attained an eminence seldom equaled in the annals of any institution. Today, he is chairman of the International Council of B'nai B'rith. Klutznick is ever in quest of Jewish unity and creative life. He is the author of "This is Israel," a series of articles on the development of the new state which first appeared in a dozen major American newspapers and later as a best-selling pamphlet.

Klutznick, as chairman of American Community Builders, developed Park Forest, a new community in Illinois. Park Forest in its beginning, some ten years ago, had but a few families; today its population is in excess of 30,000 residents. He is also busy elsewhere as a builder and is president of Old Orchard Business District, Inc. He is the American initiator of the new city of Ashdod in Israel, which is presently under construction, and is planned for an ultimate population of 200,000. Ashdod will be a deep-water port on the Mediterranean and the major industrial center. It is to be the largest preplanned community ever attempted with private capital. To his efforts on behalf of the new republic may be firmly applied the profound words of Rabbi Abba Hillel Silver in his *Vision and Victory*:

. . . The Land of Israel will be small . . . but the people of Israel will make it great. . . . Not in opulence but in eminence will their destiny be fulfilled, and the elixir of their pride will be distilled not out of dominion or far-flung borders, but out of the faithful and skilful building of the good society. . . .

Since the establishment of the State of Israel Klutznick's gifts as a speaker and a leader and interpreter of the Jewish status in the United States and elsewhere have been increasingly drawn upon and widely acclaimed. There are today practically no major Jewish organizations which seek from fellow-Americans and co-religionists in the United States material or spiritual support which do not call upon Klutznick to lend to their causes the prestige and stature of his personality. Invariably, he gives generously of himself in furtherance of their ideals. His affiliations include the vice-presidency of the National Jewish Hospital in Denver, trustee of the Leo N. Levi Hospital, vice-presidency of the National Jewish Labor Board, and presidency of American Friends of the Hebrew University. He is a member of the executive committee of the American Jewish Historical Society, chairman of the Conference of Presidents of Major Jewish Organizations, and he was recently elected National Chairman of the United Jewish Appeal. He serves as effectively and conscientiously with many other groups the goals of which are dedicated to patriotism and the welfare of his fellow-countrymen—Jews and Christians alike.

Judge Braude Author of New Book

Member Judge Jacob M. Braude of Circuit Court, Cook County, is the author of a recently published volume *NEW TREASURY OF STORIES FOR EVERY SPEAKING AND WRITING OCCASION.* The titles of his earlier books all of which won national acclaim are: *HANDBOOK OF HUMOR FOR ALL OCCASIONS, THE SPEAKER'S ENCYCLOPEDIA OF STORIES, QUOTATIONS AND ANECDOTES,* and, *SECOND ENCYCLOPEDIA OF STORIES.*

Prentice-Hall publishers of Judge Braude's books report that his latest volume offers 2,900 items, triple-indexed by topic, author and number. These include 900 anecdotes, 199 articles, 435 humorous stories, 400 quotations, 452 epigrams, 514 inspiring stories.

The price of *NEW TREASURY OF STORIES FOR EVERY SPEAKING AND WRITING OCCASION,* is $4.95. The book is available in all book stores.

CONGRATULATIONS

First vice-president Bernard E. Epton will be installed on January 27th as the new president of the South Shore Chamber of Commerce. The ceremonies will be held at the South Shore Country Club.

His brother, member Saul E. Epton, will bask in the limelight the same evening as the incoming General Counsel of the association.

DECALOGUE LEGAL EDUCATION LECTURES

More interesting and useful than ever before, the Decalogue Society "Bread and Butter" series of Legal education lectures for the practicing lawyer continues to excite the attention of our members. Each talk is scheduled on Wednesdays at 1:00 p.m. at the offices of the Society at 180 West Washington Street. There is no charge to members and their guests for the entire series. The following lectures yet remain to be given:

January 6—*Finality of Decision for Appeals in Federal Courts*—Zeamore A. Ader

January 20—*The Trial of a Workman's Compensation Claim*—A. Anne Mazur

January 27—*School District Law*—Everett Lewy

February 3—*Zoning Law and Procedure*—Seymour Fox

February 10—*Defences in Mechanics Lien Foreclosures*—Bernard H. Raskin

February 17—*The New Illinois Law on Drugs, Devices, Cosmetics, and Hazardous Household Substances*—Albert I. Kegan

February 24—*Preference and Other Points to Remember Under the Immigration and Nationality Law*—John M. Weiner

March 2—*Recent Developments in Illinois Probate Law*—Nat M. Kahn

March 9—*Jury Instructions in Civil Cases*—Louis G. Davidson

March 16—*Property Rights in Your Name, Likeness and Personality*—Harold R. Gordon

March 23—*When Is Negligence Actionable?*—Leo S. Karlin

March 30—*Trial Strategy*—Hirsch E. Soble

April 6—*The Lawyer and Unemployment Compensation*—Samuel C. Bernstein

April 13—*The Fair Labor Standards Act*—Herman Grant

April 20—*Labor Law for the General Practitioner* —Samuel Edes

April 27—*New Aspects of Matrimonial Law* — Meyer Weinberg

May 4—*Libel and Slander Today*—Elmer Gertz

May 11—*Real Estate Sales in Minority Communities*—Mark J. Satter

May 18—*Traffic Law Enforcement*—Henry Perlman

May 25—*The New Labor Law and the Rights of Union Members Thereunder*—Harold A. Katz

Elmer Gertz is chairman of the Legal Education committee. Miss Matilda Fenberg is co-chairman.

ONE-HALF CENTURY A BANKRUPTCY LAWYER

By MICHAEL GESAS

Member Michael Gesas is a specialist in the administration of Bankruptcy Law which he has been practicing for the past fifty years. He has been a lecturer on Bankruptcy at the John Marshall Law School for twenty-eight years, and a frequent guest lecturer at the University of Chicago Law School.

This article represents recollections of fifty years of practice in the specialty of bankruptcy law; it involved considerable research to uncover dates, places, citations, and other data, Personally, these are Autumn memories as clear and bright as the remembrance of Spring. The title of the book by Harry Golden, *It Can Only Happen In America*, can find its counterpart in my own life. The date of my arrival in Chicago from New York, the city of my birth, was a momentous one in the history of America. It was May 30, 1898, the exact day that Admiral Dewey won his great victory in Manila and also that the Bankruptcy Law of 1898 became effective. Sixty-one years later, I am able to celebrate "one-half century as a bankruptcy lawyer." Mine is the unique experience of having long and comprehensive contact with the subject of bankruptcy in one of the largest commercial centers of the United States, of being a close student of bankruptcy law for most of my life, a lecturer in such law for twenty-eight years, and an advocate before Congress on bankruptcy legislation which resulted in several amendments of the law, as well as an active practitioner.

As a clerk in the law office of Blum & Blum, in Chicago in September, 1898, I took part in the preparation of schedules in one of the earliest cases in bankruptcy filed in this district. That was my first contact with Schedules A and B.

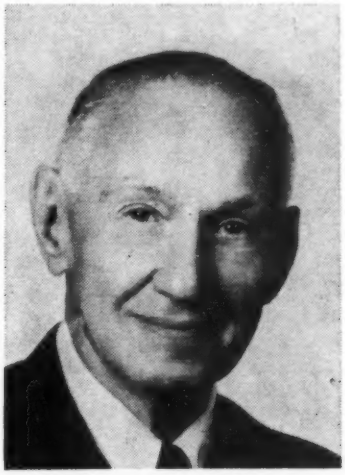
During the first ten years after the passage of the Bankruptcy Act there were few treatises on the subject of bankruptcy. One old textbook entitled *Bump on Bankruptcy* merely contained references to the Bankruptcy Act of 1867 and a copy of the 1898 Act. This volume was followed by *Black on Bankruptcy*.

A study of the historical background of the Bankruptcy Act reveals its origins in the Jewish Sabbatical Year of Release, more than 3,000 years ago, an event which the Israelites celebrated every seven years. The fifteenth chapter of Deuteronomy contains explicitly the first known historical law providing for the release of debtors from their debts. It reads:

> At the end of every seven years thou shalt make a release and this is the manner of the release; every creditor that lendeth aught unto his neighbor shall release it; he shall not exact of his neighbor or his brother because it is called the Lord's release.

Modern bankruptcy law is not to be regarded as a criminal statute although in its original form under the English statute of King Henry VIII offenses were punishable by imprisonment. At the present time they are incidental to the real objects of the law, being merely aids in carrying out the purposes of the Act.

The old Roman laws against insolvent debtors, known as *Cessio Bonorum*, contained cruel and monstrous provisions against them which existed until the time of Julius Caesar. There were then incorporated in Roman jurisprudence humane principles freeing from capital punishment, imprisonment, or slavery (as might have been his fate) an insolvent debtor who had honestly and fully turned over all his property for the benefit of his creditors.



MICHAEL GESAS

The American Bankruptcy Law finds its true origin in the English law, with the difference, however, that under the old English Acts the bankrupt was always referred to as "the offender." The odium of crime thus based on the word "bankrupt" still clings to it to this day.

It is not my purpose to elaborate on the English Acts, the first of which was passed in 1542 during the thirty-fourth year of the reign of Henry VIII. Then came the Acts of the thirteenth Elizabeth and those of the first and twenty-third years of the reign of James I. Subsequently, an Act was passed in 1705, during the reign of Queen Anne, which contained the first provision for a discharge in bankruptcy.

By the United States constitution the right to regulate and control bankruptcies was granted to the Federal government. The framers of the Constitution, appreciating the wisdom of uniform rules, vested Congress with the sole power of passing a law relating to bankruptcy. (Section VIII of Article I of the Constitution.) The first law regarding this subject in the United States was passed in 1800 during the administration of John Adams. Its wording, in the main, followed the English Bankruptcy laws and was limited in its operation to traders, merchants, underwriters, and brokers. This law was limited by its terms to five years and was repealed in 1803.

The second such law was passed in 1841, but was repealed within two or three years for political reasons, this being the most heated period of states rights controversy. This law was a most admirable one; it was the first on the subject constructed on broad lines. It abandoned the original idea that it was to be invoked only by creditors, but also permitted voluntary action on the part of debtors to bring their assets into the Bankruptcy courts for equitable distribution, and it was no longer confined to merchants and dealers in money.

Almost twenty-five years passed before the Act of 1867, which remained in force until its repeal in 1878. The law of 1867 made it too easy to throw a debtor into bankruptcy

and too difficult for him to obtain his discharge. Numerous complaints were made against the operation and enforcement of this Act, and, as stated in *Wells*, 114 *Fed.* 222, the Act of 1867 carried with it many evils, real or supposed. One of such evils was its oppressive and expensive fees system. The assets were readily consumed and, as stated in the case of *Oakland Lumber Co.*, 170 *Fed.* 634, nothing contributed so much to bring about the repeal of the Act of 1867 as the large expense of its administration.

The law of 1908 was framed with the special aim of avoiding these faults; and the extravagance of administration has been guarded against by stringent provisions limiting the compensation of the officers of the court to low commission rates and prohibiting any other compensation in any form whatsoever. The spirit of the Act of 1898 breathed economy in its administration and made the Act a strictly business-like law. Under the old acts the distance of the courts from the litigants was a serious defect, since remedied in the present Law by the creation of referees in bankruptcy located in counties near the places of business of bankrupts, thereby affording them an opportunity to be heard without having to travel great distances.

In 1898, there was only one District judge, the late Christian C. Kohlsaat, previously the judge of the Probate Court of Cook County. The District Court was located in the Monadnock block because, at the time, the present Federal Court House was in the process of construction. There were two referees, Sidney Eastman and Frank L. Wean. During the first decade after the passage of the Bankruptcy Act, the type of cases filed did not involve the administration of large estates, and it was only upon the ascent to the Bench of that great jurist, Kenesaw M. Landis, that the Act became effective. He insisted on hearing most of the examinations personally. On many occasions he held hearings until midnight. He became a force in the administration of the law, demanding honesty and integrity from the bankrupts and their lawyers. It was a great privilege to appear before him in many matters before he became Baseball Commissioner. The Bench certainly lost one of its strongest advocates of the principle that justice was for all.

One of my most interesting cases was the petition of involuntary bankruptcy that I filed against John Alexander Dowie, the founder of the City of Zion, who proclaimed himself a prophet and a Messiah, and who had many followers. The adjudication was contested. Upon the hearing of the issues, we called as an expert one of the then famous alienists, Dr. Archibald Church, who testified on direct examination that the miracles claimed to have been wrought by Dr. Dowie and the articles about them published in a magazine issued by him, called *Leaves of Healing*, were, in his opinion, the work of a person mentally affected. The cross-examination of this doctor by Patrick Haley, father of John P. Haley, Referee in Joliet, Illinois, rates in my mind as an example of the finest cross-examination of any witness that it has been my privilege to hear. The cross-examiner asked Dr. Church whether a man who believed in the story of the Creation of the World would be sane or insane? He answered, "Sane." When asked about the stories of Abraham and Isaac, about Moses receiving the Ten Commandments at Mount Sinai, and several other biblical incidents, Dr. Church also responded with a stern opinion that a believer in these stories would be sane. Such testimony proved impossible for the opposing counsel to counter in an effort to prove fraud. The consternation of Judge Landis was great. When asked to appoint a receiver in the Dowie case, he exclaimed, "Does this mean that I will have to run Zion City?" The Judge was assured that the receiver could do so adequately. Subsequently, this matter was adjusted, but in later years after Dowie's death, another petition in bankruptcy was filed against his successor, William Voliva, and the assets were administered and sold by the bankruptcy court.

The amendment of 1910 to the Act of 1898 permitted the filing of voluntary petitions by a corporation, but as recently as September, 1957, a determination of the question of the power of corporate directors, without authority from the stockholders, to file such a petition had to be made. Our office represented the *High-Low Tank-Car Service Stations, Inc.*, which filed a voluntary petition on September 27, 1957, an order of adjudication being entered on the same day. Subsequently, on October 2, 1957, three stockholders filed their petition to vacate the order of adjudication and to dismiss the proceedings. On November 25, 1957, the District judge entered an order denying the stockholders' petition, which denial was appealed to the United States Court of Appeals, *Case No.* 12,227. The Court of Appeals for the first time settled the rule of law, ruling that the Board of Directors, having authorized the filing of a voluntary petition, had such a right under the laws of the State of Illinois which vest the management of the affairs of a corporation in its Board.

Under the Law of 1898, the creditors were permitted to file answers to an involuntary petition in bankruptcy to contest the issues; this right was taken away by later amendment.

At the time of the passage of the Bankruptcy Law, the Chicago Title & Trust Company refused to guarantee titles to property acquired through bankruptcy proceedings until the constitutionality of the Act had been determined by the Supreme Court of the United States. The early case, *Hanover National Bank vs. Moyses*, 186 *U.S.* 181, clearly established the right of Congress to so legislate; it held that the law did not impair the obligation of contracts, that it was uniform, that it did not violate the guarantee of due process, and that Congress, constitutionally, had the right to be the paramount law of the land. The court in *McRamey vs. Riley*, 128 *Miss.* 665, declared:

> By the enactment of this statute Congress occupied the entire field. All state laws as well as state constitutional provisions on the subject were superseded. In other words, the Bankruptcy Act in its scope and purpose under the constitution is the supreme law of the land on this subject.

I have had the opportunity to refer to this citation on many occasions, the most recent of which occurred some three months ago in a Chapter XI proceeding where the point of issue was the power of the State of Illinois to issue a subpoena under the Workmen's Compensation Act seeking to examine one of the officers of the debtor corporation. I cited this authority among others to the effect that once the Bankruptcy court gains jurisdiction of the debtor's property, its jurisdiction is paramount over any other.

Upon a hearing of another Chapter XI proceeding, an application was made before the District judge of the United States to restrain a judge of an Arkansas court from interfering with the rights of the Bankruptcy court in Illinois. Although it was determined that Justice Frankfurter of the United States Supreme Court had delivered an opinion that the District Court had no power to restrain or enjoin a judge of a State court, counsel advised the District judge that the Judicial Code of the United States excepted bankruptcy matters. The injunction was issued.

It was my privilege to be connected with a case that has been cited in nearly all case books, namely, *Daniel Harkin vs. Edward J. Brundage*, 276 *U.S.* 36. This case involved a conflict of jurisdiction between the State court and the Federal court on the question of priority of jurisdiction and what law governs. This was a 1925 case filed by me in the Circuit Court of Cook County in which I sought the appointment of a receiver on the ground that during 1924

those in control of the business had used the same for their own purposes; that the property had been abstracted, embezzled, and wasted; that the corporate officers had failed to take any appropriate action against these misdeeds; that the company was unable to pay its current expenses; that it was necessary for the business to be maintained in order to complete, in saleable form, material on hand; and that a receiver to continue the business should be appointed. A notice was served on the defendants stating that an application for the appointment of a receiver would be made before the State court, Dennis Sullivan then presiding. The motion was continued at the request of respondent counsel, who stated that he was unprepared. A stipulation was made in open court to the effect that the status quo would be preserved. Five days later a bill was filed in the United States District Court by a creditor, the bill reciting that it was filed on the behalf of the petitioner and on behalf of the creditors of the woolen mills who would join in the prosecution. Its averments in respect to ownership and the disastrous operation of the company were much the same as those of the bill filed in the State court.

Edward J. Brundage was appointed receiver by the District Court. A motion was made in the Federal court to turn over the assets to the State court because the proceedings had been first commenced in such court. The District judge denied this motion, and, upon appeal, this decision was affirmed by the United States Court of Appeals by a vote of two to one. A certiorari was granted by the United States Supreme Court.

This is the first instance that I have found where the argument of counsel in the court below was set forth in the appendix of the court's opinion. I am happy that my name was included among the counsel mentioned. The opinion condemns the action of the Worsted Sales Company. I quote from Justice Taft's opinion:

> It is unnecessary to rehearse the evidence of the persons engaged in this combination to secure in the Federal Court the earlier receivership; but it is very clear that the whole suit in which the receiver was appointed was brought to secure that end before the action of the State court, and that the prime factor in the whole matter, which it does not do injustice to any had elements of a conspiracy, was the Daniel Boone Mills Company. Mr. "U" was its lawyer and a member of the executive committee of its directors. He sought and procured the continuance in the State court. He continued to act as that company's attorney in his dealing with Mr. "V" and in the conferences between "W" and "X." When the form of the bill was changed from a stockholder's bill to a creditor's bill, they all, including Mr. "U" hunted for a non-resident creditor to consent to file the bill. The whole work was the result of "U's" active agency. "U" secured the delay in the State court by what on his part for his company was an agreement that nothing in the interim should be done to affect the litigation in the State court and that the status should be maintained. "U" does not really deny this, though he says he did not think he went so far. What he said in court cannot be contested, because it is a stenographic report. There should be no friendly receiverships because the receiver is an officer of the court and should be as free from friendliness to a party as should the court itself. Nor should there be any competition or rivalry on the part of the two courts themselves in regard to assuming jurisdiction. The temptation of the exercise of power and patronage in the selection of receivers and the management of great business under the court should not be a "feather's weight" in prompting court action.

The Supreme Court directed that the Federal court surrender the property in possession of the receiver to the State court.

A very interesting case arose under the following circumstances. A married couple, over seventy years of age, who were engaged in the real estate business, were accused in the bankruptcy court of having received $200,000.00 in cash, the disposition of which was satisfactorily accounted for. After a lengthy and extensive hearing, the bankrupts were ordered to pay this sum over to the trustee; they failed to do so, claiming in defense that they had no property in their possession. Their defense was disallowed and they were incarcerated in the County jail where they remained for two months prior to my entry into the case as their counsel. The case, *Oriel vs. Russell*, 278 *U.S.* 358, was authority for the rule that in order for a bankrupt to purge himself of contempt he must comply with the turnover order, and that no defense could be interposed which would introduce evidence of the same character as that which was used in defense of the claim of possession of property. Thus a defendant was placed in circumstances where imprisonment could be for life. The referee refused to permit me to go over the same grounds of lack of money which had been previously urged under the authority of the case cited. I thereupon filed a petition before the late, lamented Judge Barnes, whom I consider as having been one of the finest justices in the United States, and, who, like Judge Landis, insisted upon impeccable honesty, but who also felt that humane treatment should be exercised in proper cases. Just prior to the hearing the United States Supreme Court in the case of *Maggio, petitioner, vs. Zeitz*, 333 *U.S.* 59, reversed the effect of the Oriel case. Justice Jackson delivered the opinion of the court:

> The making of an order requiring the turning over of property to a trustee in bankruptcy is appropriate only when the evidence satisfactorily establishes the existence of the property or its proceeds and possession thereof by the person against whom the order is sought at the time of making the order, as distinguished from the date of bankruptcy. However reprehensible the conduct of a bankrupt may have been in secreting property which should have been surrendered to his trustee, an order which requires him to surrender property which he no longer has should not issue in order that punishment may follow. An order requiring the turning over of property to a trustee in bankruptcy must be supported by clear and convincing evidence, including proof that the property has been abstracted from the bankrupt's estate and is in the possession of the person proceeded against. Such a careful balancing was said to be required in turn-over proceedings because coercive methods involving imprisonment are probable and are foreshadowed. Certainly, the same considerations require as careful and conscientious weighing of the evidence.

Relying on this decision, Judge Barnes entered an order releasing these bankrupts from imprisonment.

The Michael Collaris case was filed by a bankrupt about six months before the Second World War. The schedule failed to include about $100,000.00 of real estate located in Anzio, Italy, which had been inherited by him prior to the filing of the petition. The bankrupt received his discharge. At the conclusion of the war a creditor filed a petition to re-open the proceedings on the ground that the estate had not been fully administered and that the realty in Italy had not been scheduled.

I was retained in this matter. What first occurred to me was the question of whether the bankruptcy court had extra-territorial jurisdiction over property located outside the United States. Relying on a case decided by the United States Supreme Court under the Act of 1867, which ruled that the bankruptcy court had no extra-territorial jurisdiction over property located in Texas prior to its admission to the United States, the court in the instant case sustained my contention that the bankrupt should not be compelled to turn over this property to the trustee, there being no adequate provision under the Bankruptcy Act requiring such action. As a result of this decision, an amendment to Section 70 of the Act was made, adding the following language that specified the right of the trustee to be vested with "all kinds of property wherever located; by the effect of this amendment now the trustee can take title to all property, and the bankrupt can be compellled to convey his interest in and to the same."

Your writer was one of the counsel in the case of *Continental Illinois Bank & Trust Company vs. The Chicago Rock Island & Pacific Railway*, 294 *U.S.* 656, wherein the bank sought to procure the vacation of an order enjoining it from making sale of collateral. The court announced:

> It may be that in an ordinary bankruptcy proceeding the issue of an injunction in the circumstances here presented would not be sustained . . . but a proceeding under Section

77 is not an ordinary proceeding in bankruptcy; it is a special proceeding which seeks only to bring about a reorganization . . . and to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of this section, and thereby to render its provisions futile.

This case was interesting also because it held that an injunction would lie even if the value of the security was becoming adversely affected.

The famous *Lustron case,* 184 *Fed 2nd* 789, arose as the result of the filing of an involuntary petition in this district. A decree entered in an equity suit pending in the District court of Ohio had authorized the sale of Lustron's property located in Ohio to a steel company which had bid it in for $645,000.00; the order of sale was to be entered within twenty-four hours after the filing of this petition in the local District court. The Illinois court restrained the receiver in the Ohio proceedings; thereupon the receiver, the RFC, and the purchaser at the Ohio sale attempted to vacate the restraining order and to transfer the case to the Ohio court. These motions were denied and the matter was appealed to the Court of Appeals of this circuit, which sustained the lower court. Certiorari was denied by the United States Supreme Court. This case resulted in the enactment of an amendment to Section 32 of the Bankruptcy Act adding the clause 38-C in 1952, which enlarged the power of the judge to transfer cases to other courts.

Space does not permit further elaboration of many other important matters of interest in the administration of the Bankruptcy Act. In concluding I quote from *Remington on Bankruptcy*:

The Bankruptcy Law of the present time, its object and place in jurisprudence, far-reaching in its results, immediately bound up with the every-day affairs of business life, humane, beneficient, just and efficient in its rules, is one of the steps towards a higher civilization and better justice.

Chicago Bar Salutes Judge Harry G. Hershenson

Member Judge Harry G. Hershenson was honored on September 22, at a dinner at the Chicago Bar Association. The affair was held to mark the esteem of the legal profession and the lay community for his outstanding handling of cases in the Boy's court and his work in the divorce court where he made an enviable record of effecting reconciliations and pioneering pre-trial efforts at adjustment of cases.

Member Harry X. Cole was the toastmaster. Speakers included Albert E. Jenner, Charles R. Sprowl, Martin S. Wyman and the president of our Society, Meyer Weinberg. Presidents of eleven local bar associations attended the affair. Many judges and city's civic leaders were also present.

Upon learning from the committee in charge of arrangements for the dinner that there was a balance of $1247 from the proceeds of the affair for the purchase of a suitable present for the guest of honor, Judge Hershenson declined the gift and, instead, directed that the entire sum be contributed to the Chicago Bar Association Foundation.

SOCIETY TO ESTABLISH FELLOWSHIP FUND FOR HEBREW UNIVERSITY LAW SCHOOL

In recognition of the importance of education to Israel and the Middle East, The Decalogue Society has undertaken to establish a Perpetual Fellowship Fund as a gift from members of the Society to the Law School of the Hebrew University at Jerusalem, Israel.

The goal of the Fund is $50,000 which may be subscribed by the Society's members in the form of either cash or Israel bonds. Either type of gift is tax deductible.

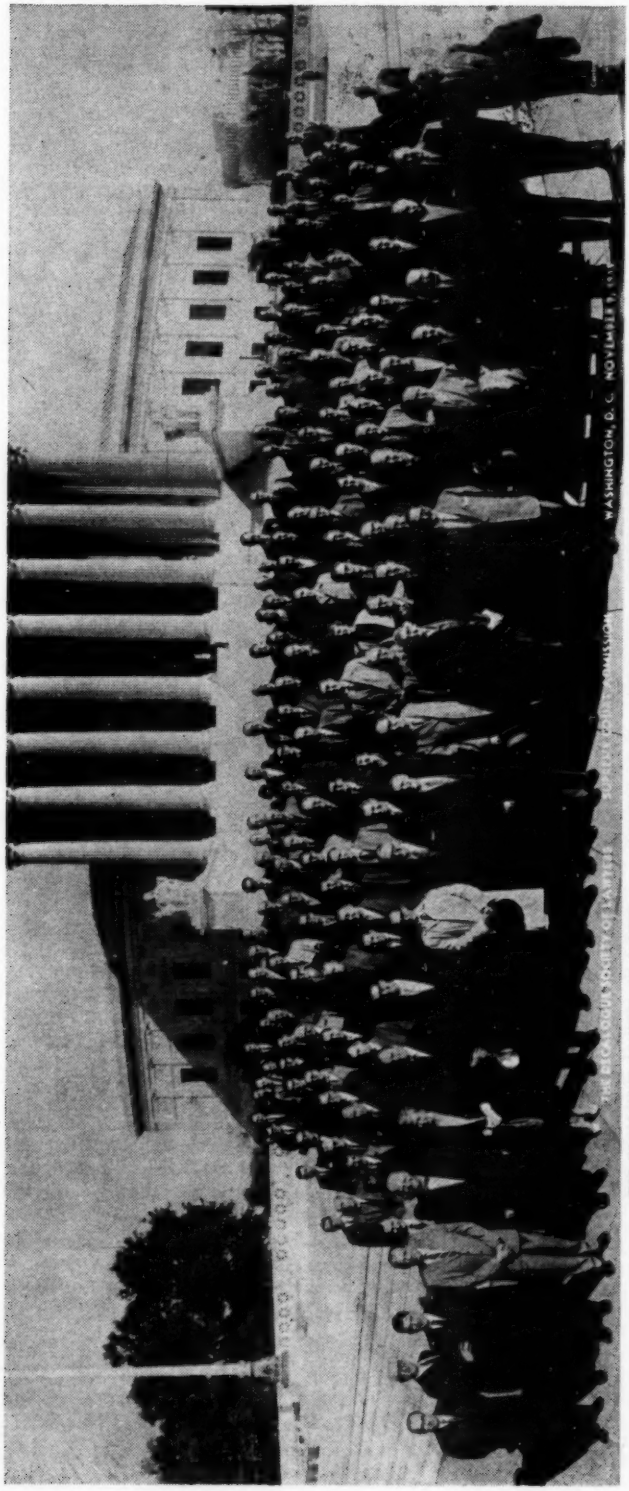
The Hebrew University is one of the world's foremost educational institutions. Famous scientists and educators from many countries are included in its faculty. The University places special emphasis on research in scientific fields to help solve some of Israel's many economic problems.

The University lost its campus on Mount Scopus to Jordan in the War of Independence in 1948. While its buildings and laboratories were gone, the University continued to function in make-shift quarters. A new campus is now rising at Givat Ram, a suburb of New Jerusalem. Over 7000 students, Jew, Christian, and Moslem, students from all parts of the world, are enrolled at the University.

The income from the Fund will be used each year for a fellowship in honor or memory of an outstanding lawyer. The first fellowship will be in memory of Archie H. Cohen, past president of The Decalgoue Society, and for 50 years a servant of his people and his country.

Eugene Bernstein, chairman of the Fellowship Fund Committee, and president Meyer Weinberg have called upon every member of the Society to participate in this great undertaking so vital to Israel and the cause of peace and understanding. Contributions of cash or Israel bonds should be sent to Jack Edward Dwork, committee treasurer, 77 W. Washington Street, Chicago 2, Ill. Checks should be made payable to American Friends of the Hebrew University, Inc.

Other Committee members are David F. Silverzweig, secretary, Meyer C. Balin, Morris Bromberg, Harry D. Cohen, Nathan M. Cohen, David Davidson, Harry G. Fins, Joseph S. Grant, Louis Z. Grant, Mrs. Harry A. Iseberg, Solomon Jesmer, Senator Marshall Korshak, Judge Irving Landesman, Oscar M. Nudelman, Nathan H. Schwartz, Marvin M. Victor, and Alec E. Weinrob.



THE DECALOGUE SOCIETY OF LAWYERS — SUPREME COURT ADMISSION — WASHINGTON, D.C., NOVEMBER 9, 1959

U.S. Supreme Court Admits 199 Decalogue Members

The Decalogue Society of Lawyers sponsored pilgrimage to obtain certificates to practice before the United States Supreme Court successfully culminated on November 9th. On that day 199 members of our Society appeared before all of the Justices and were duly sworn in and admitted to practice before the highest tribunal in this country.

The applicants were formally sponsored in a colorful ceremony by James Lee Rankin, Solicitor General of the United States. The visitors were also greeted in an informal talk by Justice Tom C. Clark.

Many of the members were accompanied by their wives. Upon being admitted, the Chicago lawyers delegation visited many points of historic interest in the nation's capitol. President Meyer Weinberg, Meyer C. Balin, chairman of this project and Stanley Stroller, co-chairman attended to the necessary formalities in connection with the visit and loyally attended to the comforts of the travelers. Member Harry Cooper of the Easy Travel Agency arranged this trip and saw to the accommodations of the visiting lawyers and their families.

At a recent meeting of our Board of Managers, Messrs. Balin and Stroller were formally voted the Society's thanks for seeing the project through to a most successful conclusion.

HAROLD T. BERC

Member Harold T. Berc was recently elected National Commander of AMVETS, American Veterans of World War II. Berc's selection as head of this organization followed more than a decade of devoted service to the principles and needs of AMVETS. He occupied a number of administrative posts for the AMVETS in Cook County and elsewhere in Illinois before reaching top honors in that society.

Berc's war record includes service aboard the battleship Washington, in Guadacanal sea battles. He won the bronze star during the battle of Philippine Seas, and he is the proud possessor of five battle stars.

Applications for Membership

MEYER C. BALIN, *chairman*
STANLEY STOLLER, *co-chairman*

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CONGRATULATIONS

Member Isador I. Feinglass, former Assistant States Attorney, and long active in B'nai B'rith lodges and communal affairs, was elected president of Greater Chicago B'nai B'rith Council. The Council consists of fifty four lodges with a total of more than twenty five thousand men members.

THE WAREHOUSE LAW IN ILLINOIS

By REGINALD J. HOLZER

Member of our Board of Managers Reginald J. Holzer is a technical adviser on legal matters to the Illinois Commerce Commission, and hearing referee for warehouse cases. He helped draft the 1955 Illinois Warehouse Act, and amendments to the Illinois Personal Property Act.

With elevators throughout the State bulging surplus grain, and with the immediate prospect of ocean-going merchant ships bringing mountains of personal property to fill our now teeming personal-property warehouses, the time has come to examine Article XIII of the Illinois Constitution of 1870 and the Warehouse Laws that it has begotten.

Article XIII, entitled "Warehouses," has seldom been the object of legal controversy. Since 1915[1] it has rarely been mentioned by the Illinois Supreme Court. Although the Illinois Appellate court discussed it with reference to the validity of a Chicago fire-prevention ordinance in 1945[2] and the United States Supreme Court dealt with it in 1947[3] with regard to the conflict of State with Federal warehouse laws, Article XIII remains the unchallenged, but often overlooked, champion of the warehousing public of Illinois.

The framers of the Illinois Constitution knew very well that adoption of Article XIII as written was effectively placing statutory legislation in the Constitution. The tenor of the times ninety years ago, however, was such that sponsors of the warehouse Article were enthusiastically endorsed in their denunciations of railroaders and warehousemen as lobbying monopolists of the most dangerous sort who were squeezing the very life out of the farmers of grain and other produce as well as shippers and receivers thereof.[4]

Article XIII declares that all storehouses where grain or other property is stored for a compensation are public warehouses whether the property be mixed as fungible or kept separate[5]. It gives all depositors the right to examine the property stored as well as the warehouse books and records[6]. In addition to spelling out the duty of railroads to deliver full measure to consignees of property[7], the Article establishes the responsibility of the Legislature to pass laws, to be construed liberally, for the protection of producers, shippers and receivers of grain and produce from fraud[8].

In a frontal assault upon warehouses in Chicago, Article XIII requires grain warehousemen in cities having a population of over 100,000 to publish and post weekly affidavits to be corrected daily, showing inventories reflecting quality and quantity of grain in stores[9].

Swiftly following adoption of the 1870 Constitution, the Legislature set out to pass the laws called for in the Warehouse Article.

Concerning the Railroad and Warehouse Act of 1871, our Supreme Court declared that it was intended by the Legislature that same was to be a complete system of itself, in no manner connected with or dependent on any other law on the subject[10].

The first test of the new Act came to the Illinois Supreme Court in 1873[11], when a Chicago grain warehouseman of many years standing refused to apply for a warehouse license on the ground that forcing him to succumb to the regulations of the 1871 Act through the rules and regulations adopted by the Railroad and Warehouseman's Board of Commissioners created by it (this Board of Commissioners was a forerunner of our present Illinois Commerce Commission) was depriving him of the use of his property without due process. The Court, however, held that rather than deprive anyone of rights to property, the Act had the effect of protecting the public from "Monopolists"[12].

With reference to the Constitution of 1870, the Court further stated that "Incongruous as Article XIII may seem in an organic law," the Constitutional Convention had the right to include it [13].

REGINALD J. HOLZER

The Act of 1871 made it a punishable offense for the owner of a grain warehouse to commingle his grain with that of other depositors on the theory that by so doing the warehouseman might be inclined to improve the grade of his grain by mixing it with grain of superior quality belonging to his depositors. It was also felt that by storing his own grain free he could under-sell his depositors who were called upon to pay warehouse charges and handling fees and thus tend to deflate the entire grain industry. When the 1897 Legislature adopted an Amendatory Statute specifically permitting grain warehousemen to commingle their grain with that of other depositors provided certain safeguards against fraud employed[14], the Supreme Court of Illinois quickly held such Amendatory Statute unconstitutional in view of Article XIII[15]. At the same time the Supreme Court interpreted Article XIII as directing that warehousemen of fungible property could not mix their own with that of the public. The Court in this decision further stated that those in the business of warehousing for the public were engaged in a public employment and therefore could not hold an interest in the stored grain adverse to that of those whom they were required to serve.

The problem that faced Illinois grain warehousemen when the Courts flatly told them that they could not mix their grain with that of depositors under our Constitution was solved for many of these warehousemen when in the

case of Rice vs. Santa Fe Elevator Corporation, 67, 1146, 331 U. S. 218, 91 L Ed. 1447, it was decided that where a grain warehouse is duly licensed by the United States Government under the Federal Warehouse Act[16] under which the mixing of grain is permitted although regulated, then such a matter is beyond the reach of State regulation. For this very reason many grain warehouses, particularly in Chicago, which were formerly licensed by the State of Illinois are now federally licensed.

When another Chicago warehouseman challenged the Act of 1871 on the ground that it was discriminatory legislation in that it provided certain standards for grain warehouses in cities of 100,000 or more and less rigid standards for grain warehouses in smaller communities[17], the Supreme Court disagreed, citing Article XIII which itself makes the same differentiation[18].

In 1955 the Illinois Legislature repealed the 1871 Warehouse Act [19] and adopted the "Public Grain Warehouse and Warehouse Receipts Act"[20].

This Act provides for license requirements[21], bonding requirements[22], spells out the duties, and provides restrictions for warehouse receipts[23] of grain warehousemen.

The Public Utilities Act[24] states that "Public Utility" means and includes every . . . individual . . . that now or hereafter may own . . . or operate . . . for the public use . . . any . . . property . . . for the storing or warehousing of grain. . . ."

Clearly, then, every grain warehouse in Illinois is a public utility, governed and regulated by the Illinois Commerce Commission under the Public Utilities Act in no way different from other public utilities such as those which supply telegraph services, telephone services, gas, electricity, water, railroads, etc. Their fiscal policies, intercorporate relations, rates, services, and other functions are subject to control by the Illinois Commerce Commission.

A hasty answer to the question: "are personal property warehouses in Illinois public utilities?" would almost certainly be inconclusive. Upon first reading the definition for "warehouse" found in the Public Utilities Act one gets the impression that only grain warehouses are actually public utilities, for it reads: "Warehouse includes all elevators or storehouses where grain is stored for a compensation, whether the property stored be kept separate or not"[25].

However, in 1915, the Illinois Supreme Court decided that a cold storage warehouse *was a public utility* under the Public Utilities Act of 1913 which defined "Warehouse" in language identical to that in the present Public Utilities Act[26]. In so deciding the Court stated that Article XIII was designed to protect producers and shippers from warehouses of grain and the Legislature, in defining "Warehouses," as above did not intend to exclude public warehouses of personal property.

The "Storing Personal Property for Hire Act" as amended[27] is included in the present Public Utilities Act and provides licensing requirements[28], bonding requirements[29], outlines the duties[30], and limits the form of advertising[31] that may be conducted by personal property warehousemen.

Personal property warehouse receipts are regulated by the Uniform Warehouse Receipts Act[32] and within these limitations are largely optional in format with the warehousemen. When one considers the vast differences in commodities stored in the State ranging from household furniture to heavy machinery, one can realize how the format of these receipts must vary.

In conclusion, it would seem that in these days of storage-space shortages the time is ripe for a determination by the Illinois Supreme Court as to whether it still feels that it was the intention of the framers of our 1870 Constitution to prevent grain warehousemen from mingling their grain with that of depositors regardless of safeguards against fraud. If our Supreme Court would be inclined to follow Hannah vs. People, 198 Ill. 77, 64 N. E. 776, along these lines, then it might follow that a realistic approach to the problem of providing friendly State legislation for the grain industry in Illinois might call for the repeal of Article XIII in its entirety. It would also be helpful if the question of personal property warehouses being public utilities could finally be determined in this State. With these problems solved we could look to the future, content that our laws are equipped to handle the warehousing business in Illinois.

FOOTNOTES

1 Public Utilities Commission vs. Monarck Refrigerating Co., 267 Ill. 528, 108 N. E. 716.
2 Edward R. Bacon Grain Co. vs. City of Chicago, 325 Ill. App. 245, 59 N. E. 2d 689.
3 Rice vs. Santa Fe Elevator Corp., 67 S. Ct. 1146, 331 U. S. 218, 91 L Ed. 1447.
4 Constitutional Debates, 1869-1870, Vol 2.
5 Section 1.
6 Section 3.
7 Section 4 and Section 5.
8 § 6 and § 7.
9 § 2.
10 East St. Louis Bd. of Trade vs. People, et al., 105 Ill. 382.
11 Munn vs. People, 69 Ill. 80, aff Munn vs. Ill. 94 U. S. 113, 24 S Ed 76.
12 Munn vs. People, 69 Ill. 80, aff Munn vs. Ill. 94 U. S. 113, 24 S Ed 76.
13 Munn vs. People, 69 Ill. 80, aff Munn vs. Ill. 94 U.S. 113, 24 S Ed 76.
14 Laws 1897, page 302 amending Act 1871.
15 Hannah vs. People, 198 Ill. 77, 64 N. E. 776.
16 7 U. S. C. A. § 241, etc.
17 People vs. Hayer, et al., 91 Ill. 357.
18 Ill. Const. of 1870, Article XIII, § 2.
19 Ch 114 § § 189-214.
20 Ch 114 § § 214.1-214.27.
21 Ch 114 § § 214.3-214.7.
22 Ch 114 § § 214.8.
23 Ch 114 § § 214.9-214.16.
24 Ch 114 § § 214.17-214.27.
25 Ch 111 2/3 § 10.3.
26 Ch 111 2/3.
27 Ch 111 2/3 § 119-140.
28 Ch 111 2/3 § 119, 122, 125, 126, 135.
29 Ch 111 2/3 § 124.
30 111 2/3 § 121, 123, 131, 132, 133, 134, 136, 137, 138.
31 111 2/3—§ 129, 130.
32 Ch 114 § 233, etc.

NU BETA EPSILON ELECTS

At the recent 40th annual convention member David S. Cohen was elected Grand Chancellor of Nu's Beta Epsilon National Law fraternity, a three thousand-member national legal association.

Other members of The Decalogue Society elected as officers were: Benjamin H. Loiben, 1st Grand Scribe; Robert L. Hankin, Grand Master of the Exchequer; Nathaniel B. Hischtick, Regional Vice Grand Chancellor; George J. Van Emden is Chancellor of the fraternity's Chicago alumni chapter.

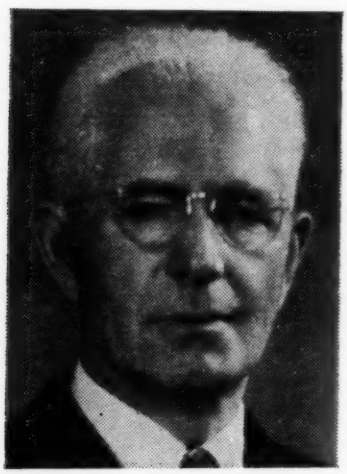
EXPERT MEDICAL TESTIMONY

By ULYSSES S. SCHWARTZ

Member Judge Ulysses S. Schwartz of the Illinois Appellate court, delivered the following opinion, an excerpt from which and an explanatory note are printed below.

In the case of *Kemeny* v. *Skorch*, 22 Ill. App. 2d 160, the court was confronted with a unique question of pre-trial practice in a personal injury case.

The trial court had ordered the plaintiff's attorney to submit to the opposing side a report in his possession of a medical examination made by a medical expert for use at a pre-trial hearing, and the attorney having refused, the court held him in contempt of court. On appeal to the Appellate court, it was argued that the medical report was a privileged document and that under the Supreme court rule 19-5(1)), it was not subject to disclosure through discovery procedure. It was also argued that the document was part of the lawyer's "work product" and under the doctrine enunciated in *Hickman* v. *Taylor*, 329 U.S. 495 (1946) was privileged.



JUDGE ULYSSES S. SCHWARTZ

The Appellate court held that the phrase "work product" was without significance and that it was not intended to make the work papers of a lawyer, as such, an addition to the highly restricted group of confidential communications which are privileged against disclosure. However, as the report was made by or for a party in preparation for trial, it was not, under the language of the rule, subject to discovery proceedings.

The court did not let the matter end there. It proceeded to consider the desirability of having the rule amended and said the following:

Having decided that the matter is not privileged but is nevertheless immune to pre-trial discovery by virtue of the rule, we ordinarily should regard our judicial function fulfilled. But this is different from the ordinary case. It involves a rule, a regulation of the court's own household. In such a case we deem it appropriate that we should state our views regarding the desirability of the rule. The trial court well stated the matter when he said in making his decision that there should be a distinction between a professional and a lay witness; that to arrive at a true appraisement of the case and the damages involved, it would be salutary for a professional witness to know when he made a report that he would have to adhere to it on trial unless he wished to face the possibility of impeachment by the use of his report, or had good cause for changing it. The trial court felt that the trend of recent decisions of the Supreme court was in that direction.

An expert medical witness is an important part of the technique of personal injury litigation. He generally is a persuasive, fluent, impressive witness, able to make the jury understand that what he is telling them is the product of years of educational preparation and medical experience, with particular reference to and emphasis on the specialty involved. He will name his colleges and universities, his degrees, the medical societies to which he belongs, the national specialty groups to which he has been admitted, the hospitals in which he has interned or externed, and the hospital staffs on which he has held positions. Having thus made his introduction, he will state his findings upon examination of the plaintiff and, by means of a long hypothetical question devised for that purpose, will relate the cause of the pathological condition to the accident and give his prognosis. That he is being paid by one side is always skilfully lost in casual answers to cross-examining cynical question, by a modest shrug indicating that a charge is made per hour or day, which seems wholly inconsequent to the large proportions from which his great capacities emerge. Thus is set the basis for the jury's finding on damages. The fluency of the contemporary doctor is a matter of amazement and perhaps envy to the profession supposed to have a monopoly on the use of language. It was not long ago that the spate of literature—fictional, biographical, scientific, and historical—that issued from the pens of wielders of the scalpel and distributors of capsules startled literary critics. One, with a touch of bitterness, ventured to say that to become a successful writer it was necessary to have a medical degree. Even so, little did the non-litigating public know the true rhetorical masterpieces that came from the lips of medical experts on the witness stand and how they, as much as the lawyers, shattered the aerial limits of verdicts in personal injury cases and made hundreds of thousands grow where only thousands grew before.

We say all this to put in its true perspective the role of this particular type of witness. He is part of the trial apparatus of a personal injury case. As such, every possible step should be taken to channel his

(*Continued on Page* 17)

REFLECTIONS ON ADEQUATE LEGAL SERVICE*

By RICHARD S. KAPLAN

Member Richard S. Kaplan practices law in Gary, Indiana. He is vice-chairman of the Lake County Mental Health Clinic and Mental Illness representative of the Indiana State Veterans Service Office.

Even as a high school student, in Boston, I remember my father's admonition, he said:

> If you expect to be a good lawyer, he kept reiterating, make sure that you know something of life and of people. Make sure you know what makes them tick. Work at every job you can. Study . . . study. Understand medicine and every kindred subject. Only then will you be a good lawyer

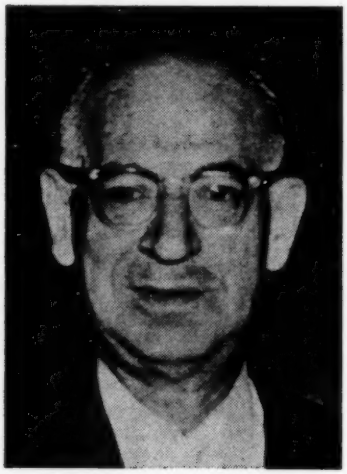
Today, after thirty-seven years of practicing law, I realize how astute, how wise was my father. Observing my fellow-lawyers in action I realize how little the lawyers have done, generally, to prepare themselves for adequately advising their clients. This was brought home to me forcefully a few weeks ago when I attended the 36th annual convention of the American Orthopsychiatric Conference in San Francisco. In hallways and rooms, in foyers and conference halls, the lawyer was discussed by psychiatrists, psychologists, and social workers.

"Why," they asked, "doesn't the lawyer recognize his limited knowledge of the human mind and human emotions and call upon those who specialize in the field of human emotions and irrational behavior for assistance when such assistance is required?"

Of course, the reference was to the lawyers' general lack of cooperation with the psychiatrists and social workers, especially in matters involving broken homes, disturbed children, drunken fathers, and divorce actions based, primarily, upon emotional disturbances. The scholars stressed the point that it is the duty of the attorney to try to preserve marriage wherever and whenever possible.

It must be recognized that attorneys in general practice handle a huge variety of cases many of which involve a complexity of non-legal problems. To assume that a legal problem is just a legal problem is, I believe, an oversimplification. The manner in which the problem arises and the emotional and psychological factors involved mean apparently nothing to the average member of the Bar, and that, I think, applies to the criminal as well as the civil actions. When an attorney is involved in a tax matter he will ask the assistance of the certified public accountant. When a patent case reaches his office, he will invariably refer the client to a patent attorney; many times an engineer will be consulted. If the case involves personal injuries, the lawyer will consult with a physician on the medical aspects of the case. Why then does not the average attorney recognize the possibility of underlying tensions or compulsions which may cause anti-social behavior? As pointed out by Robert Slatter of the Hartford, Connecticut, Bar, in an issue of the *Connecticut Bar Journal*, (June, 1956):

> The breakup of a marriage, particularly where there are children, is often the most frustrating type of case for attorneys. This stems in part from archaic and unrealistic divorce laws and procedures. . . . The evidence elicited at the trial, such as harsh language and physical abuse, is rarely the real reason for the marriage failure. A trial on these facts is often an irrelevancy. The couple walk out of the court-room with no understanding of where or why they failed. They may also leave with a vague feeling that it did not have to end this way. And, if the lawyer is honest with himself, he recognizes that in dealing with the case legalistically he never touched the nub of the problem.



RICHARD S. KAPLAN

The attorney who goes into a matter involving the relationship of husband and wife who have been quarrelling for years, and where juvenile delinquency is involved, or who attempts to handle the defense for a man charged with a crime of violence, be it assault and battery or a sexual crime, forgets that emotional tensions of one kind or another play a great part in the actions of the individual.

About one hundred years ago Claude Bernard pointed out "that one of the most characteristic features of all living things is their ability of maintaining the constancy of their internal milieu, that steady state, or, at least, the effort by a human being restoring a homeostatic equilibrium." Plainly stated, stress is defined as a particularly strenuous and damaging condition . . . or to put it in other words, stress is the state manifested by a specific syndrome which consists of all the non-specifically induced changes within a biologic system. And when those changes occur, the individual is in trouble. Stress manifests itself in the form of a definite, stereotyped syndrome, and no matter how produced, stress elicits certain specific and typical changes in the body, such as adrenocortical stimulation, involution of the lymphatic organs, and gastro-intestinal disturbances.

How can the lawyer possibly know that during stress over a prolonged period of time the man or woman will suffer a decrease in libido and fertility and that this may be accompanied by amenorrhea in women and impotence in men? How can the lawyer understand that under such circumstances a vicious circle develops and that the continuous worry, fear, or pain may lead to sexual disturbances which, in their turn, increase the stress?

Is the granting of a divorce the real answer to this problem? Does the giving of homespun counsel and advice to a client suffering from stress, or faced by a spouse who is disturbed emotionally, adequately solve the problem?

The question facing the lawyer in trying to solve the problems of his clients in the preceding outline has been recognized by the American Bar Association. For the past several

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years a joint committee of the American Bar Association and the American Psychiatric Association has been hard at work on problems of mutual concern. Thanks to the five-year grant given by the Rockefeller Foundation, a model criminal code is being written by the American Law Institute which, when completed, will do away with a lot of the guess-work on the part of lawyers and will put the emotional and mental disturbances of a person charged with crime in proper perspective.

I would recommend that EVERY lawyer read a most instructive book, *Psychiatry and the Law*, written by Manfred S. Guttmacher, M.D. and Henry Weihofen, professor of law, University of New Mexico—the only book which puts the necessity for cooperation between the lawyer and the psychiatrist in proper focus. A careful study of this volume should prove an invaluable aid to the lawyer in general practice, especially in matters involving divorce and criminal offenses.

In view of the commendable cooperation the lawyer has shown in his dealings with the medical profession generally —with trust officers, accountants, engineers, and other professions—thus admitting that he recognizes that giving adequate service to his client may require the help of many factors, it is confounding to realize that failure to give the same degree of cooperation to the psychiatrist and social worker is a lack of understanding or knowledge of the aims, purposes, and skills of those two facets of orthopsychiatry.

A lawyer is competent to handle all legal matters involved in a marital action as support, custody, divisions of property, and the divorce action itself, but he is not trained to counsel or advise in matters involving the emotional aspects of the case. This is a situation where the intelligent lawyer, who truly wants to serve his client, will call upon the psychiatrict and/or social worker for help.

Perhaps that is responsible for the creation of the social-legal counselling services in many cities in this country and the consequent gradual breaking down of barriers which, for many years, have existed between the lawyer, the psychiatrist, and the social worker. It is certain that if the lawyers do not take the lead in this cooperative effort between the professions, the public may create organizations which will do the work that should have been initiated by the lawyer.

It is the opinion of those workers in the vineyards of mental health that: "When a lawyer is pressed by a client to give him counsel relating to his personal problems, non-legal in nature, unless the lawyer possesses an unusual knowledge, through specialized training, he should avail himself of the services of the psychiatrist, the psychologist, and/or the social worker. He will thus become a part of a team and will truly help his client in solving the personal problem. In so doing he will be upholding the ancient professional tradition of the law. He will truly prove to be the guardian of human rights, the defender of individuality and the dignity of man."

PAUL M. BUTLER ADDRESSES SOCIETY

Chairman of the Democratic National committee Paul M. Butler, addressed our Society, at the Covenant Club at a luncheon, on October 23rd. His subject was: *Issues of the 1960 Presidential Campaign.* The affair was held under the auspices of our Society's Forum committee, Saul A. Epton, chairman. It is expected that, at a later date, the chairman of the National Republican committee Preston R. Morton, will also address our organization.

Lawyer's LIBRARY

Learning is an ornament in prosperty, a refuge in adversity, and a provision in old age. —ARISTOTLE

NEW BOOKS

American Bar Foundation. *Unauthorized practice source book; a compilation of cases and commentary on unauthorized practice of the law.* Chicago, 1958. 124p. $2.00. (Paper) (Project on unauthorized practice of law, pub. no. 1)

American Civil Liberties Union, *Illinois Div. Secret detention by the Chicago police.* A report. Glencoe, Ill., Free Press, 1959. 47p. $1.00.

Association of the Bar of the City of New York and National Legal Aid Association. *Equal justice for the accused.* N.Y., Doubleday, 1959. 144p. $3.50.

Cohen, F. S. *Ethical systems and legal ideals; an essay on the foundations of legal criticism.* Ithaca, Cornell Univ. Press, 1959 (1933) 303p. $1.95. (Paper) (Great seal books)

Cook, P. L. *Effects of mergers; 6 studies.* London, Allen & Unwin; N. Y., Macmillan, 1958. 459p. $9.50.

Daumier, H. V. *Lithographs: law and justice.* Ed. and with an introd. in English by Julian Cain. N.Y., Tudor Pub. Co., 1959. 132p. 47 pl. $7.95. (Library ed.)

Davey, H. W. *Contemporary collective bargaining.* 2nd ed. Englewood Cliffs, N.J., Prentice-Hall, 1959. 388p. $9.00.

Drury, Allen. *Advise and consent.* N.Y., Doubleday, 1959. 616p. $5.75. (A novel)

Family Service Association of America. *The lawyer and the social worker; guides to co-operation.* N.Y., 1959. 36p. $0.65.

Glueck, Sheldon, ed. *The problem of delinquency.* Boston, Houghton, Mifflin, 1959. 1183p. $10.50.

Haar, C. M. *Land-use planning; a casebook on the use, misuse, and re-use of urban land.* Boston, Little, Brown, 1959. 790p. $10.00.

Harvard University. Law School. *International problems of financial protection against nuclear risk; a study under the auspices of Harvard Law School and Atomic Industrial Forum, Inc.* N.Y., Atomic Industrial Forum, 1959. 104p. $6.00.

Keezer, F. H. *Law of marriage and divorce.* 3d ed. 1959 cum. supp. by M. Weinberg. Indianapolis, Bobbs-Merrill, 1959. $7.50.

Kraines, Oscar. *Congress and the challenge of big government.* N.Y., Bookman Associates, Inc., 1958. 129p. $3.00.

McCord, William, McCord, Joan & Zola, I.K. *Origins of crime; a new evaluation of the Cambridge-Somerville youth study.* N.Y., Columbia Univ. Press, 1959. 219p. $6.00.

Neal, H. E. *Six against crime; Treasury agencies in action.* N.Y., Messner, 1959. 192p. $3.50.

Robinson, Nehemiah. *Universal declaration of human rights; its origin, significance, application, and interpretation.* N.Y., Inst. of Jewish Affairs, World Jewish Congress, 1958. 173p. $3.00.

Smead, E. E. *Freedom of speech by radio and television.* Washington, Public Affairs Press, 1959. 182p. $4.50.

U.S. Laws, statutes, etc. *Immigration and nationality act, anno., by S. Kansas.* 4th ed. 1954-59 cum. supp. Buffalo, Dennis, 1959. 367p. $15.00.

BOOK REVIEWS

THE SUPREME COURT FROM TAFT TO WARREN, by Alpheus Thomas Mason. Louisiana State University Press. 250 pp. $4.95.

Reviewed by DAVID F. SILVERZWEIG

Once upon a time, when this reviewer was young and an avid reader of the panegyrics which then passed for American history, it was a great comfort, indeed, to one of pure heart and innocent mind to learn that all of our presidents were "great men," uniform in their virtue, nobility, and high-minded dedication to American ideals. That was, of course, in the pre-expose period of our national culture. Since then there have come the probers—searchers of fact, iconoclasts, even skeptics and cynics. And soon we came to learn that all that is gilded is not golden.

The Supreme Court of the United States is now news. And being news the Court has been and is now under searching scrutiny. How the Court functions, the "nine old men" who compose it, the political considerations which control their appointment, the politics and economics of judicial behavior, all have been analyzed and psychoanalyzed.

For like the child in the familiar fable who cried out, "The king is naked!", it has now been proclaimed for all to hear that the Supreme Court is human, the justices are human beings with human virtues and frailties, and with the bias of ordinary men. The author of this volume is not the first, of course, to make this discovery. What he has contributed is a lucid and incisive exposition of four decades of dynamic evolution in the Court's history, from the ultraconservative Taft to the ultraliberal Warren.

Professor Mason's volume is one of a considerable number on some phase or other of the Supreme Court which have been spawned since Roosevelt sponsored the "court-packing" proposal, which, incidentally, was not a Roosevelt or New Deal invention at all (the number of justices on the Court has ranged from five to ten). Some of these books have been of the gossip school genre; others have been learned studies by serious-minded students of the Court and its role in a "government of laws and not men."

Is the Court above criticism? The author thinks not, though he quotes others who believe that the glare of criticism and publicity tends to interfere with its work. Is the Court a super-legislature? Has the Court usurped power which belongs to the Congress? Do judges always vote in accordance with their convictions? What are the limits of judicial self-restraint? Where is the fine line between judicial *review* and judicial *supremacy?* Does the assumption of the judicial robe change the man, as Frankfurter says? What role does politics play in judicial decisions? The author ranges wide in the field of law and history in discussing these and other provocative questions which have long preoccupied critics and historians of the Court.

Mason reveals how the Court has been in continuous ferment, rocked by differing political and economic views as well as divergent philosophies of the judicial function. The judicial process, no less than any other judicial institution, never operates in a vacuum. The pressures from without and the conflict of ideas within shape the course of constitutional law. The facts to establish a point are gathered by the author from many sources, including the expressions of the justices themselves, in their judicial opinions and in their non-judicial writings as well.

A distinguishing feature of this volume is the author's eminence as one of the keenest observers and trenchant historians of the Supreme Court. A law teacher at Princeton, Professor Mason has written many authoritative books in the field of law and has beeen a prolific contributor to political and legal journals. His biographies, *Brandeis: A Free Man's Life* and *Harlan Fiske Stone: Pillar of the Law,* are volumes of no ordinary distinction; each is a monumental contribution both to biography and law.

The Supreme Court from Taft to Warren offers a fine combination of unquestioned scholarship and a lively prose with which to appreciate it. Professor Mason has given lawyers and others interested in law and government a fresh and deep understanding of the role of the Supreme court in a free society.

COPYRIGHT LAW SYMPOSIUM. Number 10. Columbia University Press, 480 pp. $5.00.

Reviewed by MORTON SCHAEFFER

Past president Morton Schaeffer active in copyrights, patent, and trade mark law practice is a member of the Board of Trustees of the Copyright Society of U.S.A. and a member of the American Patent Law Association committee on copyrights.

This volume is the Tenth Copyright Law Symposium which marks the conclusion of the Twentieth annual Nathan Burkan Memorial competition sponsored by the American Society of Composers, Authors and Publishers. The National Award for 1957 was given to Samuel A. Olevson of Harvard University Law School for his essay "English Experience with Registration and Deposit." Olevson takes as

his theme the case of Washingtonian Publishing Co., Inc. vs. Pearson (306 U. S. 30—1939). This case proclaims that publication with proper notice is sufficient to give copyright protection. Registration and deposit are secondary, and only a requisite before suit for infringement may be brought. The essay further examines and traces in detail English copyright history and legislation with special reference to registration and deposit through the Statute of Anne up to English copyright legislation of 1911.

The National Award for 1958 was given to Roger Needham of the University of Michigan Law School whose topic was "Tape Recording, Photocopying and Fair Use." Needham sets forth sixteen questions to be considered in measuring what constitutes a fair "use" and gives his analysis of each. With the advent of reproduction of copyrighted works on tapes, photocopies, and video tape, he indicates that leglislation should be helpful to define fair use for scholars who copy for private use, and also in the area of parody. The writer's conclusion is that the question as to what constitutes a fair use of copyrighted works "is too complex to allow handling in a fashion other than on a case to case basis."

The following works were given honorable mention:

The Scholar and the Copyright Law, by John L. Wilson, University of Michigan Law School.

Problems in the Transfer of Interests in a Copyright, by Arthur L. Miller, Harvard University Law School.

The Jukebox Exemption, by Eugene Mooney, University of Arkansas School of Law.

Related Rights and the American Copyright Law: Compatible or Incompatible? by L. Lee Phillips, Cornell University.

The Relationship between Copyright and Unfair Competition Principles by Martin Leach-Cross Feldman, Tulane University.

News: Public Right v. Property Right, by William F. Swindler, University of Nebraska College of Law.

Contributions to Periodicals, by Dino Joseph Caterini, New York University School of Law.

Copyright Publication: The Sale and Distribution of Phonograph Records, by Peter H. Morrison, Columbia University School of Law.

To the student of copyright law the Nathan Burkan Memorial Competition has proved through the years an extremely useful reference work.

EXPERT MEDICAL TESTIMONY—

(*Continued from Page* 13)

contributions in a direction that will serve the ends of justice. One such step is to make his reports as nonpartisan, objective, and scientific as are the other notable activities of his profession. To that end, we believe the rule should be revised, but while it stands we have no choice but to interpret it fairly.

Judgment reversed.

Opinion delivered by Judge U. S. Schwartz and concurred in by Presiding Judge J. V. McCormick and Judge J. T. Dempsey.

SOCIETY HONORS JUDGE EDWIN A. ROBSON

The Decalogue Society annual Israel bond dinner was held on October 28th at the Covenant Club. Edwin A. Robson, Judge of the United States District Court was the Society's guest of honor. Senator Wayne Morse, State of Oregon, delivered the principal address. Member Judge Henry L. Burman was chairman of the occasion; past president Alec E. Weinrob was co-chairman. First vice-president, L. Louis Karton presided at the affair.

Judge Robson dwelled at considerable length on the lawyer's responsibility to the sacredness of his calling, the profession of law. The triumph of justice he said, must be ever the concern of a member of the Bar:

> We must always remember that ours is a dedicated profession second only to the clergy. We stand primarily for the common good and only secondarily for our own profit. In this lies our distinction from those engaging in commerce. To them competition is the life of the trade.

The Judge deplored the low standing of our profession in the esteem of our fellow Americans as indicated in a poll recently conducted by Life Magazine:

> . . . A cross-country survey of citizens in all walks of life showed 60% had no liking for lawyers; 56% thought their fees excessive; 51% had never used their services; and 79% were dubious of a lawyer's integrity. This, I know, is not correct but I believe that it gives us cause for reflection and study. . . .

Upon the legal profession, the Judge emphasized, rests the responsibility to protect, preserve and strengthen the good way of life. Judge Cooley, he said, summed it up in these words:

> Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for society, general happiness, and the improvement and progress of our race. and whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, fame, and character, with that which is and must be as durable as the frame of human society.

"If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself."

—Alexander Hamilton

BARTLEY C. CRUM

The recipient of the Decalogue Society Award of Merit for 1946, Bartley C. Crum, died of a heart attack in New York, on December 10, 1959. Mr. Crum was a lawyer who, before moving to New York, practiced for many years in San Francisco, California.

He was appointed by President Harry S. Truman in 1946 to the Anglo-American Commission of Inquiry on Palestine. Although a Roman Catholic, Mr. Crum spent many years waging a vigorous fight to make a homeland for uprooted European Jews. He was the author, in 1947, of a best seller, *Behind the Silken Curtain*, a book dealing with his experiences as a member of this commission.

Mr. Crum was much in demand as a speaker at Israel Bond rallies and among organizations interested in the causes of Jewry.

The Decalogue Society of Lawyers extends its deepest sympathy in their bereavement to his widow, mother, daughter, and other members of Mr. Crum's family.

BASKIN ON RUSSIA

Member Samuel J. Baskin addressed the Covenant Club Forum at a luncheon on November 3rd on impressions of his recent trip to the Soviet Union. Baskin visited Moscow, Leningrad, and Kiev.

JUDGE BURMAN ELEVATED TO THE ILLINOIS APPELLATE COURT

Member Judge Henry L. Burman was appointed by the Illinois Supreme Court to the Illinois Appellate Court, Second division, first District. At the time of his appointment Judge Burman was Chief Justice of the Superior Court, Cook County.

Past president Jack E. Dwork was chairman, second vice-president Bernard E. Epton co-chairman, of The Decalogue Merit Award committee which selected Philip M. Klutznick the recipient of The Decalogue Annual Award for 1958.

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TEN CURES FOR COURT CONGESTION

The American Bar Association special committee on Court congestion has issued a pamphlet entitled "Ten Cures for Court Congestion." The pamphlet recites in detail remedies for the solution of the problem as provided in the "Ten Cures." These are:

1. Pre-Trial

Pre-trial is a device that reduces both trial time and the number of trials. It can be established without legislation or court rule and results have been astounding where it is used.

2. Availability of Counsel

By planning and diligence the trial Bar could do much to prevent delays caused by unpreparedness and other conflicting trial commitments. This is a problem peculiarly within the legal profession and serious ethical as well as public relation problems exist as long as the Bar fails to solve the problems involved.

3. Jury Waivers

Judges can make jury waivers more attractive by giving preference or establishing special panels. Attorneys can do their share by reviewing their case to determine whether a bench trial would be contrary to their client's interest before demanding a jury.

4. Judicial Performance

There is room for considerable improvement in the actual hours spent in trial per day and days per year. More summer sessions and more efficient calendar handling will also result in more judge time. The Bar is in the best position and has the duty to maintain the quality of the Bench.

5. Transfer of Cases to Lower Courts

In a metropolitan area most cases seeking monetary damages could be brought to lower municipal courts rather than the court of general jurisdiction. Adequate appraisal of a case by counsel before filing and by the court during pre-trial can do much to insure trial in the less congested lower court.

6. Calendar and Trial Aids

Such aids as the certificate of readiness, individual or pool assignment systems, special settlement calendars, impartial medical testimony or administrative commissions are helpful under particular circumstances.

7. Disposition of Cases by Quasi Judicial Personnel

More courts should consider the use of referees, commissioners, auditors or arbitrators. These quasi judicial personnel can dispose of a great number of routine cases that would otherwise add to an already clogged docket.

8. Judicial Statistics

No reform can be initiated without first identifying the problems involved. Judicial statistics are necessary for proper court administration.

9. Court Administration

More efficiency in the handling of court problems would result in better use of judicial manpower. Centralization of authority clarifies the entire picture of court congestion and this, in itself, will suggest remedies.

10. Court Re-organization

Court re-organization starts at the very foundation and builds upward to create a modern court system capable of disposing of the business at hand. Partial reforms have, in the past, been hit or miss and resulted in a helter-skelter grouping of overlapping courts and duplicated or wasted effort.